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Attn: Rules Processing Team

COMMENT BY THE MEMBER COMPANIES OF AMERICAN INTERNATIONAL GROUP, INC.

The Member Companies of American International Group, Inc. comment hereinafter on the proposed new part 253 to Chapter II of Title 30, CFR, Oil Spill Financial Responsibility for Offshore Facilities.

The Member Companies of American International Group, Inc. (hereinafter "AIG companies") form the leading U.S.-based international insurance organization and the nation's largest underwriter of commercial and industrial coverages. Member companies of American International Group, Inc. underwrite property, casualty, marine, life and financial services insurance in approximately 130 countries and jurisdictions, and are leading providers of

management and professional liability insurance as well as fidelity and surety coverages. AIG companies have been the leading providers of environmental insurance programs for over 17 years. AIG Environmental, through member companies of American International Group, Inc., underwrites a complete line of pollution and casualty coverages for a wide range of industry risks. AIG's domestic property/casualty companies consistently earn the highest marks for the insurance industry's principal rating agencies: AAA from Standard & Poor's, Aaa from Moody's and A++ from A.M. Best.

AIG companies are prepared to offer evidence of OSFR on behalf of assureds, up to the $10 million/$35 million limits anticipated by MMS to be required on most COFs for which insurance will be used (see, Determination of Effects of Rules, page 11). However, the present form of the proposed regulation is not consistent with traditional underwriting principles and limitations on American insurers.

In its comment, AIG companies have used acronyms as follows:

COF - Covered Offshore Facility

OCSLA - Outer Continental Shelf Lands Act

OPA - Oil Pollution Act of 1990

OSFR - Oil Spill Financial Responsibility

RUE - Right of Use and Easement

RP - Responsible Party, as defined in OPA

253.11

I. Lease Based OSFR

MMS has proposed that OSFR be demonstrated on a per lease basis for facilities other than pipelines and for RUE holders for pipelines.[1] With respect to facilities other than pipelines, OPA makes the lessee the RP, yet the lessee may have little or no control over operations on a lease. In its proposed regulations, MMS has sought to provide flexibility in providing OSFR by allowing a "designated applicant" to assume the exposure of the RP and provide OSFR. The designated applicant may be the lessee or the designated operator. However, that does not resolve the problem which exists where neither the lessee, nor the designated operator, controls all the facilities on a lease. Problems will arise in insuring all facilities on a lease in an instance where due to farm-out, unitization, or other means, the insured lessee or designated operator does not control ongoing operations involving COFs on his lease. Moreover, neither the insurer nor the insured may be able to obtain access to information necessary for evaluating the risks on a non-operated COF. It would not be consistent with common insurance practices or prudent underwriting for an insurer to cover a facility not owned, leased, operated or otherwise controlled by its assured, and for which the insurer might have no access to information. It is a fundamental principle of insurance that risks are assessed and premiums assigned based on individual operations.

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[1] The proposed regulation also covers permittees under 43 USC § 1340, not addressed herein because operations pursuant to that statute are not believed to be conducted on a regular basis.

Although OPA makes the lessee the responsible party for offshore facilities, 33 USC § 2702(d) provides that a third party may be treated as the responsible party. This section does not relieve the original responsible party from the obligation to pay removal costs and damages prior to becoming subrogated to the rights of claimants and the U.S. However, in an instance where the lessee has no control over operation of a COF on his lease it would appear that requiring the owner/operator of the COF to demonstrate OSFR would achieve the following desirable goals:

1. It is consistent with OPA's premise that the polluter pays clean-up costs and damages resulting from his actions;

2. It would avoid the situation where a lessee who is uninvolved in the operation of a COF and may not have access to information or control over the operations, must provide evidence of OSFR.

3. It would allow the innocent lessee to obtain an indemnification or other agreement from the COF owner/operator in order to avoid the necessity of having the innocent lessee directly involved in clean-up in an instance where he might not be knowledgeable about the operation which is the source of the pollution;

4. It would be consistent with regulations for spill response plans, which are facility-based (§ 254.1) although an owner or operator may group facilities or leases pursuant to § 254.3.

MMS has expressed concern that it must be able to determine that all leases are covered by evidence of OSFR. It is respectfully suggested that the same concerns apply to spill response plans. If compliance with the regulations for both requirements could be coordinated, it would appear that MMS could satisfy itself that every facility has both a proper response plan and evidence of OSFR.

With respect to pipelines, it is the owner of the pipeline, not the holder of the right of way, who is the RP under OPA. 33 § 2701. However, the proposed regulation does not recognize the distinction made in the statute, and requires that the holder of the RUE demonstrate financial responsibility. As set out above, insurers must assess risks based upon the facility to be insured and the holder of the RUE may not be the same as the party who owns/operates a pipeline. The owner/operator of the pipeline who is the RP and who insures the pipeline for all other purposes should provide evidence of financial responsibility.

II. § 2353.29 - Insurance

Preliminarily, AIG companies question assumptions made by MMS in its Determination of Effects of Rules, RIN 1010-AC33, upon which the proposed regulations appear to be based, specifically, those set out at pages 11, 13, 16 and 21, with respect to costs of insurance as OSFR.

MMS appears to assume that if OSFR is lease based, insurers will issue certificates on a lease basis at a savings to insureds over OCSLA certificates. However, each facility provides a risk to its insurer, and the provision of certificates will be based on traditional underwriting principles, which require that the cost of the certificate be based upon the number and type of facilities insured. Lease based OSFR would not provide any savings in insurance costs, because the risk and the premium would continue to be facility based, even if separate certificates were not required. For example, regardless of the physical sizes of the leases, if lease A has one facility and lease B has five facilities, the premium for the certificate for lease B would be approximately five times that of the one for lease A.

Second, MMS appears to assume that insurers will not charge additional premiums for OPA certificates. Because OPA imposes broader liabilities than OCSLA, prudent insurers will be required to charge appropriate premiums for adding coverages necessary under the statute. AIG believes that the assumed costs of certificates are unrealistically low, considering that coverage for OPA liabilities will be broader than pollution coverage provided under traditional offshore liability package policies.

Finally, AIG companies question the most basic assumption made by MMS; that it is proper to assume that an insurer, having issued an OCSLA certificate, will issue an OPA certificate. MMS appears to believe that modification of the direct action provision of OPA eliminated underwriters' objections to issuing the new certificates. While it reduced objections to the direct action provision, this modification did not address other, more basic problems. First, the provider of OSFR faces broader exposure under OPA than under OCSLA. Traditional pollution coverage clauses in offshore package policies contain exclusions or conditions that are inconsistent with OPA liabilities. Thus, the insurance coverage upon which OCSLA certificates were based is narrower than allowed under OPA. Unless pollution coverage clauses in these policies are changed, insurers cannot issue OPA certificates. Second, as set out below, the procedure envisioned by MMS for issuing a certificate precludes American insurers from doing so. For these reasons, it appears that qualified insurers which have issued OCSLA certificates based on pollution coverages in offshore package policies will not be able to issue OSFR certificates for OPA liabilities under the proposed regulations.

The proposed rule for insurance as evidence of OSFR as written, would not permit major American insurance companies to provide insurance as evidence of financial responsibility within the framework of their corporate limitations and traditional underwriting principles.

Historically, division of risk on a percentage basis has been a fundamental principle of insurance. This division may be on a percentage of a certain amount or layers. Usually, insurance of offshore facilities involves both. As a result, it is common for ten or more insurers to share insurance of liabilities for offshore facilities. The percentage-based allocation of risk appears to be recognized by MMS, as it is referenced in § 253.29(b)(2) and (c)(4). However, in the case of American insurance companies, no one company carrying a percentage can certify insurance issued by other companies. Therefore, a "certificate" could be issued only by a broker. Typically, such "insurance certificates" are issued to third parties at the request of the assured in order to confirm to a third party that insurance has been bound in favor of the assured (many contracts for performance of services require that the contractor provide evidence of certain insurance coverages). That procedure was expressly permitted under OCSLA regulation, 33 CFR § 135.207(e). However, as pointed out by Mr. Mel Causer at the workshop conducted by MMS to discuss these proposed regulations, such a certificate issued by a broker is not a binding insurance policy and does not provide MMS with a binding agreement from an insurer to pay claims and to be sued pursuant to the provision of OPA. Therefore, it does not provide the protections sought by MMS.

The proposed insurance certificate form is to be issued by a broker (Section 4), who must certify that the insurers comply with all requirements of 30 CFR 253.29. This

requirement appears to make the broker liable for the compliance of insurers, although the broker may not have the ability to obtain information necessary for such a certification. This could result in unanticipated substitution of the broker for an insurer. In other words, the broker would insure performance by the insurer with MMS having no provision for evaluating the financial capability of the broker. To be effective, the insurance certificate should be given by every insurer or every party with authority to bind every insurer on the risk.

The proposed regulation as drafted, favors Lloyds underwriters over American insurers, because in Lloyd's, a lead underwriter is authorized to issue certificates on behalf of multiple underwriters insuring percentages of the risk.

The regulation as proposed would create an administrative burden in that insurance certificates must be renewed, often on an annual basis. Under this circumstance, MMS will be required to have a procedure for constant updating of certificates.

III. § 253.30 Guarantee

The guarantee provision of the proposed regulations is so narrowly drawn as to be of little practical use except in the example of one business entity acting as guarantor for a related entity. The restrictiveness of this manner of providing OSFR evidence precludes use of a guarantee as a solution to the problems outlined in Section II regarding insurance as OSFR evidence.

Preliminarily, when insurance is used for evidence of OSFR, MMS and claimants rely on the rating of the insurer (at least with respect to insurers other than Lloyd's underwriters) or the insurer's status as a means of demonstrating the insurer's financial strength and ability to

pay claims under OPA. With respect to guarantors and self-insured designated applicants, MMS and claimants rely on the financial strength of the applicant or the guarantor as set out in the requirements for self-insurance.

The requirements for guarantors in proposed § 253.30 have been based solely on the financial strength requirements. However, MMS and claimants would lose no security if the category of guarantor under this regulation was expanded to include insurers otherwise satisfactory to MMS. In this instance MMS would rely on the insurer's rating or status as it does for allowing a designated applicant to use insurance coverage as evidence of OSFR.

IV. Deadlines

The sixty day deadline for having arranged evidence of financial responsibility can be met by AIG, at least as to assureds who are responsible parties with respect to facilities with known worst case spill scenarios. However, it may be beneficial to stagger the deadline so that those parties who have not been required to develop this information for response plans have additional time. This would reduce the burden on MMS which would result from its being inundated with forms on a single annual date, and would enable responsible parties and insurers to develop reliable information.

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